

February 14, 2012

VIA ELECTRONIC FILING

Diane P. Wood, Circuit Judge
J.P. Stadtmueller, District Judge
Robert M. Dow, Jr., District Judge
United States District Court for the Eastern
District of Wisconsin
517 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Your Honors:

Re: *Baldus, et al. v. Brennan, et al.*
Case No. 11-CV-562

As plaintiffs have noted in their letter filed yesterday, defendants filed a motion for summary judgment last Friday evening, February 10, 2012. In this motion, defendants seek summary judgment on the political gerrymandering, Voting Rights Act and delayed voting claims that have been asserted in this case. In response to the letter filed by counsel for plaintiffs, defendants note as follows:

- Plaintiffs suggest that the motion was unauthorized and/or untimely, but Fed. R. Civ. P. 56 provides that "[u]nless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." In absence of a court order or local rule, and defendants are aware of none, the motion is authorized and timely under Fed. R. Civ. P. 56.
- Pursuant to this Court's order dated January 24, 2012, plaintiffs' deadline for completing discovery and amending their Complaint was seven calendar days after defendants served responses to plaintiffs' second set of discovery. Defendants hand-served these discovery responses on Friday, February 3, 2012, three days before they were due. Accordingly, plaintiffs' deadline for amending their Complaint and for completing discovery was last Friday, February 10, 2012. Defendants filed their motion for summary judgment as soon as it became apparent that plaintiffs were not going to amend their pleadings.
- Much of the motion is directed to the need for dismissal of the political gerrymandering claim(s) (counts 2, 4, 5 and 8). The intervenor-defendants in this case previously moved for judgment on the pleadings on these claims (at least insofar as they related to Act 44), noting that under the current state of the law, any party attempting to proceed on such a claim must identify and plead a workable, judicially-discernable standard for evaluating them; failure to do so is grounds for dismissal. The primary thrust of plaintiffs' response to that motion was that it was premature and that plaintiffs ought to be allowed to pursue

discovery before being forced to defend their political gerrymandering claims. *See generally Plts' Opp. To Rule 12(c) Motion*, dkt. # 105, at 3 ("It is simply too early to decide whether a workable standard can emerge from facts that have yet to be developed"), dated January 3, 2012. Defendants accordingly specifically waited until discovery was complete to raise the issue anew--this is the timing plaintiffs previously advocated. *Id.* at 21 ("The Court should deny the motion or, in the alternative, convert it to one for summary judgment and allow plaintiffs to take discovery before having to respond").

- A portion of the motion is directed to jurisdictional limitations of the Court and defendants' Eleventh Amendment sovereign immunity rights. *See generally Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 117 (1984) (federal courts do not have authority to enjoin state officials from violating state law); *Froehlich v. Wis. Dep't of Corrections*, 196 F.3d 800, 802 (7th Cir. 1999) (same).
- Plaintiffs contend that they are involved in a discovery dispute with the state legislature regarding a certain set of documents that they contend relate to their Voting Rights Act claims. Defendants are not a party to this dispute but, in any event, have a difficult time envisioning how those documents, whatever they may be, would salvage plaintiffs' Voting Rights Act claims. The motion for summary judgment seeks judgment on those claims on the basis of narrow sets of data relating to the African-American population figures in southeastern Wisconsin—namely that the African-American population is not large and compact enough to create seven African-American majority state assembly districts, a fact plaintiffs' own expert witness has conceded—and the election history in state assembly district 8. Any records that might be discovered would not alter these basic facts.

Thank you for your consideration.

Yours very truly,

REINHART BOERNER VAN DEUREN s.c.

s/Patrick J. Hodan

Patrick J. Hodan

cc All Counsel of Record (*via ECF*)